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**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE, NO. 01-244  
(Judge Charles W. Cope)

Case No. SC01-2670

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**SPECIAL COUNSEL'S EMERGENCY MOTION FOR PROTECTIVE ORDER**

The Special Counsel hereby moves for a protective order directing that the depositions of Nina and Lisa Jeanes may not be taken until after the earlier of (1) the Respondent submitting to and testifying at deposition without asserting his Fifth Amendment rights, or (2) the conclusion of the criminal proceedings pending against Judge Cope in California. In support, thereof, the Special Counsel states:

**Why the Requested Relief Should Be Granted**

1. The charges in this case arise out of the Respondent's conduct in Carmel-by-the-Sea, California in April 2001. Prior to the notice of formal proceedings, the authorities in California filed a criminal complaint and ultimately an amended complaint against the Respondent. A copy of the Amended Complaint, a true and correct copy of which is attached hereto as **Exhibit A**, charges five counts, all misdemeanors under California law.

2. Trial in the criminal proceedings was originally set for the Fall of 2001, but the Respondent successfully obtained a continuance, and the trial is now scheduled for February 25, 2002. A copy of a report showing the current status of these proceedings is attached hereto as **Exhibit B**.

3. Two of the main witnesses, who are also the victims of Respondent's alleged judicial and criminal misconduct, are Nina Jeanes and Lisa Jeanes, mother and daughter and both residents of the State of Maryland.

4. The Special Counsel and Robert Merkle, counsel for Respondent, agreed that (1) Respondent would appear for a deposition on January 18, 2002, would not invoke his Fifth Amendment right to remain silent, and would explain for the first time his version of the events in California, and (2) Respondent would take the depositions of Nina and Lisa Jeanes on January 22 and 23, respectively.

5. Because of the importance taking depositions in this order, the Special Counsel confirmed his agreement with Mr. Merkle by letter dated December 22, 2001.

<sup>1</sup> A true and correct copy of this letter is attached hereto as **Exhibit C**.

6. At least until January 17, 2001, Respondent never gave any indication that he would not live up to the agreement confirmed in this letter.

7. The Special Counsel communicated this agreement both to Lisa Poll, the Deputy District Attorney prosecuting the charges against Respondent in California, and Nina and Lisa Jeanes. All three were concerned that allowing the depositions of Nina and Lisa Jeanes to take place before the criminal trial would prejudice the State of California, because it had no right to depose the Respondent, in light of the Fifth Amendment.

8. The Special Counsel reassured Nina and Lisa Jeanes and Ms. Poll that any prejudice would be counterbalanced by the fact that Respondent was submitting to a deposition. Because the deposition is a matter of public record pursuant to Article V, section 12 of the Constitution of the State of Florida, Ms. Poll would be able to review Respondent's deposition to prepare for the criminal trial.

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<sup>1</sup> December 22 was the Saturday before Christmas. On December 26, the day after Christmas, the undersigned discovered that the letter had not gone out by facsimile, so the letter was not faxed out until December 26, 2001.

9. But for the reassurances of the Special Counsel, based on his agreement with Respondent's counsel, Ms. Poll and/or Nina and Lisa Jeanes would have acted to postpone the depositions. But for the agreement with Mr. Merkle, the Special Counsel would not have made these reassurances.

10. Under these circumstances, it would be patently unfair to the State of California and to Nina and Lisa Jeanes not to postpone their depositions until after either the criminal proceedings are resolved or the Respondent testifies at a deposition in this matter without invoking his Fifth Amendment rights. The Commission's proceedings would have the effect of interfering with the State of California's paramount interest in enforcing its criminal laws.

### **Why an Emergency Motion Is Necessary**

11. On the morning of January 16, 2002, the Special Counsel telephoned Mr. Merkle to confirm that the deposition of Respondent was still on and that Respondent would testify. Mr. Merkle responded that he would and the Special Counsel could "put that in the bank." Because Mr. Merkle had previously indicated that he might file certain motions directed to the depositions of Nina and Lisa Jeanes, the Special Counsel asked Mr. Merkle whether Respondent would be filing any such motions. The Special Counsel explained that he would be leaving town on Thursday, January 17, 2002, to travel to Pinellas County for the deposition and would need time to respond to any such motions. Mr. Merkle indicated that motions would be filed.

12. At 2:31 p.m., the Special Counsel received by facsimile a copy of Respondent's

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<sup>2</sup> Mr. Merkle has indicated that Respondent does not believe the deposition is a matter of public record and that he intends to seek a protective order to prevent the transcript from being released to the public or Ms. Poll. The Special Counsel advised Ms. Poll of the Respondent's position.

Emergency Motion to Compel, and at 2:34 p.m., Special Counsel received by facsimile a copy of Respondent's Motion for Protective Order.

13. At 3:14 p.m., the Special Counsel faxed a letter to Mr. Merkle and to the Counsel for the Hearing Panel indicating the Special Counsel's availability for a hearing. A true and correct copy of this letter is attached as **Exhibit D**. The letter makes clear that the Special Counsel would be traveling from 9:30 to 3:00 on January 17, and would be available only by cellular phone. The letter provided the cellular telephone number (it has been redacted from Exhibit C).

14. At 12:12 p.m. today, January 17, 2002, Mr. Merkle left a voice mail message at the Special Counsel's office advising that Respondent had checked himself into the hospital, would remain in the hospital through January 18, and would be unavailable for the deposition. The Special Counsel did not receive a call from Mr. Merkle on his cellular telephone. The Special Counsel happened to check his voice mail by remote at approximately 12:30 p.m., while en route to Pinellas County.

15. The Special Counsel telephoned Mr. Merkle, who confirmed that the Respondent would not be able to appear for deposition on January 18. The Special Counsel then asked Mr. Merkle to agree to postpone the depositions of Nina and Lisa Jeanes, but Mr. Merkle declined to do so. Mr. Merkle indicated that the Special Counsel would have to file a motion to have the depositions postponed.

16. The Special Counsel turned his car around and returned to Jacksonville. The Special Counsel promptly prepared this emergency motion.

WHEREFORE, the Special Counsel respectfully requests a protective order directing that the depositions of Nina and Lisa Jeanes may not be taken until after the earlier of (1) the Respondent submitting to and testifying without asserting his Fifth Amendment rights at a deposition, or (2) the

conclusion of the criminal proceedings pending against Judge Cope in California.

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Louis Kwall, Esq.**, Kwall, Showers & Coleman, P.A., 133 N. St. Harrison Ave., Clearwater, Florida 33755; **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 17th day of January, 2002.

By:

John S. Mills, Esq.

Florida Bar No. 0107719

Special Counsel

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